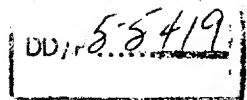


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12 NOV 1965

MEMORANDUM FOR THE RECORD:

SUBJECT: Qualifying Service under the Central Intelligence Agency Retirement and Disability System (Public Law 88-643)

1. This memorandum is prepared at the direction of the Chief, Counter Intelligence Staff, and in reference to the memorandum of the Acting Deputy Director for Plans, dated 8 October 1965, which solicited the views of Chiefs of Operating Divisions and Special Staffs, Clandestine Services, as to what types of domestic service might properly be credited as "qualifying service" under Public Law 88-643.

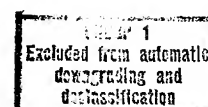
2. Section 203, P. L. 88-643 enables the Director of CIA to designate Agency officers and employees whose duties are:

- A. in support of Agency activities abroad hazardous to life or health
- B. so specialized because of security requirements as to be clearly distinguishable from normal Government employment

Such individuals are regarded as participants and entitled to the benefits of the system.

3. House Report No. 763 states that in the hearings on the bill witnesses proposed that the system encompass only a portion of Agency employees (not to exceed 30%), such as those engaged in the conduct and support of intelligence activities, whose conditions of employment were in many ways substantially similar to those of Foreign Service Officers. However, P. L. 88-643 specifically provides in Section 236 that the participants of the Act shall not exceed

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absurd

4. Section 201, P. L. 88-643 permits the Director of CIA to prescribe rules and regulations for the establishment and maintenance of the system, and requires that such rules and regulations become effective only after approval by the chairman and ranking minority members of the Armed Services Committees of the House and Senate. Also, that the system shall be administered in accordance with such rules and regulations, and with the principles established by the Act. It is assumed that the rules and regulations contained in [REDACTED] have received the prescribed approvals.

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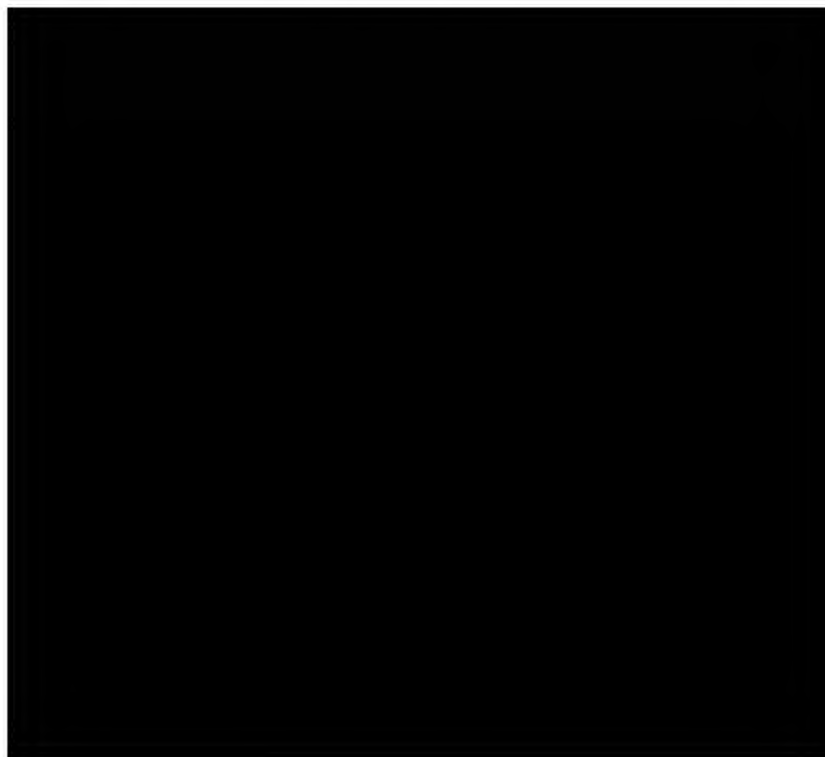
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5. Section 201 (c), P. L. 88-643 provides that any determinations by the Director authorized by the provisions of the Act shall be deemed to be final and conclusive and not subject to review by any court.

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6. Headquarters Regulation [REDACTED] contains the prescribed rules and policies governing the administration of the system. This regulation defines "qualifying service" as performance of duty:

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experience cannot be described in sufficient detail to demonstrate his qualifications adequately to a prospective employer.

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7. Under HR [REDACTED] an employee must complete 60 months of qualifying service, as defined above, in order to become a participant in the system.

8. From the memoranda dated 13 and 26 October 1965 prepared by Legislative Counsel, OGC, it is evident that the Congress fully contemplated that the geographic location of the Agency employee would not serve as a bar to his performance of qualifying duty. Hence, the failure of the Act and regulations to contain any such limitation is no accident.

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9. COMMENT: Since the enactment of P. L. 88-643 and the promulgation of HR [REDACTED] the Agency has conducted a review of employment histories, and, as a result thereof, has declared some employees eligible and some employees ineligible for participation in the system. Although nothing has been issued in writing, it is widely discussed in the Agency that the only basis for eligibility is whether the employee has served abroad for a period of five years. More specifically, it may be that the review to date has involved only those employees 50 years of age or older, who come within the provisions of Paragraph 50e (1) of HR [REDACTED]. Unless, however, the employee has served abroad for a period of five or more years, he is declared ineligible for participation in the system. The ineligible employee receives a notice from the Director of Personnel stating that his case has been reviewed by his Career Service and that he has been declared not eligible. The letter of notification gives no basis for the decision. not so

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10. It can be regarded as common knowledge among Agency employees that an individual's employment history does contain his place of assignment and his job title, but that the job title is not indicative of duties performed, and that an accurate description of duties performed is not a part of the file. Thus it is not possible for a Career Service representative to determine upon the basis of a file review whether conditions of employment were: ?

A. hazardous to life or health; or

B. in the conduct or support of intelligence activities abroad; or

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C. such as to require stringent security and covert tradecraft procedures, etc.; or

D. such as would place the individual at a distinct disadvantage in seeking other employment, etc.

11. An action by the Career Service to declare an employee ineligible for participation in the system upon the basis that he has not served abroad for five or more years, and without an affirmative determination that the duties performed do not bring the employee within the terms of the above cited conditions, is clearly an arbitrary action in circumvention of the terms of the Act and the promulgated regulations. There is nothing in the Act or in the regulations permitting a decision on the question of eligibility to be made on the basis of service abroad.

12. As stated in Paragraph 5f of the Headquarters Employee Bulletin dated 30 July 1965, the Agency clearly has been given the broadest possible latitude for defining "qualifying service", but only in accordance with the rules and regulations and with the principles established by the Act. Determinations by the Director NOT authorized by the provisions of the Act (which encompass the approved rules and regulations), open the way to litigation on the finality and conclusiveness of those determinations.

13. With reference to the limitation of 800 participants in the system, it would appear that the Congress expected the Agency to be able, within the terms of Section 203 of the Act and of Paragraph 50b (11) of HR [REDACTED] to limit the application of the Act through a meaningful decision regarding the qualifying nature of actual duties performed by the employee in each individual case. It appears that prima facie any employee who has signed the application for membership and been accepted into the Career Staff of the Agency is eligible for participation in the system. However, final determination would depend upon the actual conditions of employment of each individual. Only through development of valid criteria, within the terms of the act and regulations, can the Congress be assured that it has enacted legislation covering all eligible persons and that it will not be confronted later with allegations of discriminatory legislation.

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14. The compiled views of the Chiefs of Operating Divisions and Special Staffs, Clandestine Services, regarding types of domestic service which might qualify an employee for participation in the system are informative but useful to the Career Staff, Office of Personnel and Retirement Board only insofar as those views might assist in the development of criteria and in a decision as to the qualifying nature of the duties performed by each individual employee. ck

15. Unless the Agency determines the duties actually performed by each employee, and develops valid criteria for the establishment of the qualifying nature of those duties under the provisions of the Act and the regulations (which apply no restriction as to the geographic location of the performance), the way is left open for litigation by employees who decide to adopt an adversary role. Furthermore, appropriate representatives of the interested Senate and House Committees should be kept informed of progress on the development of qualifying service criteria from individual cases in anticipation of an ultimate justification of the Agency's administration of the Act. what? why?

16. As a corollary to the administration of the Act it would seem that, if an employee is serving on a career basis in a field which normally requires the performance of minimum periods of qualifying service, the Agency would be obligated for reasons of equity to establish procedures which would assure that the employee be permitted to qualify for the system. Even at the present time there is an apparent need for a policy as to the status of employees, who have been available for qualifying duty by reason of membership in the Career Staff, but have not been permitted to acquire such because they have been assigned to supposedly non-qualifying duties for the convenience of the Government. ~~negotiated~~

17. Other related problems might appropriately be mentioned at this time as follows:

- A. Policy decisions are necessary regarding cases in which an employee, who has qualified for participation in the system, resigns before he reaches the age of 50 years. Having qualified for the system, it would appear that such person might properly apply for retirement benefits under the system upon reaching age 50. no - reqs are quite specific on the [redacted] para U(2) K(1)(2) - K(2)!

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- B. The SECRET classification of the rules and regulations invites wholesale and unavoidable violation of employee secrecy agreements. A person of necessity is required to discuss and disclose the facts of his retirement plans and program with such as, insurance representatives, medical and legal advisors, wife and family, and the Bureau of Internal Revenue.
- C. The implementation of the Agency Retirement System may become a moot subject as of 1 December 1965 when a Cabinet Committee headed by Budget Director, Charles L. SCHULTZE publishes a new program of retirement and fringe benefits for the 5.5 million civilian and military personnel.

now - why?


not so-



Special Assistant
Counter Intelligence Staff

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The Law states that determinations by the Director shall be deemed conclusive & not subject to review by ~~the~~ any court - Ergo why  great fear of See Para 5 & Para 15

The Proposition that Agency is ~~obligated~~ **SECRET** to permit every "willing" employee to qualify for the retirement system is absurd. This is not giveaway benefits program but a program to compensate for the short career prospects of many & for hardships of others